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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-629*

13 **DONNA ARLENE CLAR**  
13838 Talca Avenue  
14 San Diego, CA 92129

**A C C U S A T I O N**

15 **Registered Nurse License No. 481229**  
**Public Health Nurse Certificate No. 50730**

16  
17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
23 Consumer Affairs.

24 2. On August 31, 1992, the Board of Registered Nursing issued Registered Nurse  
25 License Number 481229 to Donna Arlene Clar (Respondent). The Registered Nurse License was  
26 in full force and effect at all times relevant to the charges brought herein and will expire on  
27 December 31, 2013, unless renewed.

28 ///

3. On October 8, 1993, the Board of Registered Nursing issued Public Health Nurse Certificate Number 50730 to Donna Arlene Clar (Respondent). The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2013, unless renewed.

## JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license within eight years after expiration.

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480;
- or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

1           9.       Section 493 of the Code states:

2               Notwithstanding any other provision of law, in a proceeding conducted by  
3               a board within the department pursuant to law to deny an application for a license  
4               or to suspend or revoke a license or otherwise take disciplinary action against a  
5               person who holds a license, upon the ground that the applicant or the licensee has  
6               been convicted of a crime substantially related to the qualifications, functions, and  
7               duties of the licensee in question, the record of conviction of the crime shall be  
8               conclusive evidence of the fact that the conviction occurred, but only of that fact,  
9               and the board may inquire into the circumstances surrounding the commission of  
10              the crime in order to fix the degree of discipline or to determine if the conviction is  
11              substantially related to the qualifications, functions, and duties of the licensee in  
12              question.

13              As used in this section, "license" includes "certificate," "permit,"  
14              "authority," and "registration."

15           10.       Section 2761 of the Code states:

16              The board may take disciplinary action against a certified or licensed  
17              nurse or deny an application for a certificate or license for any of the following:

18              (a)       Unprofessional conduct, which includes, but is not limited to, the  
19              following:

20              ....

21              (f)       Conviction of a felony or of any offense substantially related to the  
22              qualifications, functions, and duties of a registered nurse, in which event the  
23              record of the conviction shall be conclusive evidence thereof.

24              ....

25           11.       Section 2762 of the Code states:

26              In addition to other acts constituting unprofessional conduct within the  
27              meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct  
28              for a person licensed under this chapter to do any of the following:

29              ....

30              (b)       Use any controlled substance as defined in Division 10 (commencing  
31              with Section 11000) of the Health and Safety Code; or any dangerous drug or  
32              dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or  
33              in a manner dangerous or injurious to himself or herself, any other person, or the  
34              public or to the extent that such use impairs his or her ability to conduct with safety  
35              to the public the practice authorized by his or her license.

36              (c)       Be convicted of a criminal offense involving the prescription,  
37              consumption, or self-administration of any of the substances described in  
38              subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
39              record pertaining to, the substances described in subdivision (a) of this section, in  
40              which event the record of the conviction is conclusive evidence thereof.

41              (d)       Be committed or confined by a court of competent jurisdiction for  
42              intemperate use of or addiction to the use of any of the substances described in

1 subdivisions (a) and (b) of this section, in which event the court order of  
2 commitment or confinement is prima facie evidence of such commitment or  
3 confinement.

4 12. Section 2765 of the Code states:

5 A plea or verdict of guilty or a conviction following a plea of *nolo*  
6 *contendere* made to a charge substantially related to the qualifications, functions  
7 and duties of a registered nurse is deemed to be a conviction within the meaning  
8 of this article. The board may order the license or certificate suspended or  
9 revoked, or may decline to issue a license or certificate, when the time for appeal  
10 has elapsed, or the judgment of conviction has been affirmed on appeal or when  
11 an order granting probation is made suspending the imposition of sentence,  
12 irrespective of a subsequent order under the provisions of Section 1203.4 of the  
13 Penal Code allowing such person to withdraw his or her plea of guilty and to enter  
14 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
15 accusation, information or indictment.

#### 12 REGULATORY PROVISIONS

13 13. California Code of Regulations, title 16, section 1444, states:

14 A conviction or act shall be considered to be substantially related to the  
15 qualifications, functions or duties of a registered nurse if to a substantial degree it  
16 evidences the present or potential unfitness of a registered nurse to practice in a  
17 manner consistent with the public health, safety, or welfare. Such convictions or  
18 acts shall include but not be limited to the following:

- 19 (a) Assaultive or abusive conduct including, but not limited to, those  
20 violations listed in subdivision (d) of Penal Code Section 11160.  
21 (b) Failure to comply with any mandatory reporting requirements.  
22 (c) Theft, dishonesty, fraud, or deceit.  
23 (d) Any conviction or act subject to an order of registration pursuant to  
24 Section 290 of the Penal Code.

25 14. California Code of Regulations, title 16, section 1445 states:

26 (b) When considering the suspension or revocation of a license on the  
27 grounds that a registered nurse has been convicted of a crime, the board, in  
28 evaluating the rehabilitation of such person and his/her eligibility for a license  
will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).  
(2) Total criminal record.

///

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

#### **COST RECOVERY**

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### **FIRST CAUSE FOR DISCIPLINE**

**(April 25, 2007 Conviction for Driving Under the Influence On or About January 25, 2007)**

16. Respondent has subjected her licenses to disciplinary action under Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On April 25, 2007, in a criminal proceeding entitled *The People of the State of California v. Donna Arlene Clar*, in San Diego County Superior Court, North County Division, case number CN225155, Respondent was convicted on her plea of guilty to violating Vehicle Code (VC) section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor. A charge for violation of VC section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or more, a misdemeanor, was dismissed pursuant to a plea bargain.

b. As a result of the conviction, Respondent was sentenced to three years summary probation and ordered to complete five days as a condition of probation in the Public Service Work Program, with credit for two days served. Respondent was also ordered to pay fees and fines, and attend and complete a first offender alcohol program and a Mothers Against Drunk Driving (MADD) Impact Panel.

c. The facts that led to the conviction are that on or about January 25, 2007, Respondent drove through a four-way intersection without stopping at a speed of about 35 miles per hour in a 25 miles per hour zone in Escondido, California. An officer on duty from the Escondido Police Department (EPD) observed the speeding vehicle and contacted Respondent for an enforcement stop. During the enforcement stop, Respondent smelled of alcohol, had blood shot eyes, and admitted to consuming two beers. Respondent failed the field sobriety tests (FST) that were explained by the officer. In two preliminary alcohol screening (PAS) attempts, Respondent registered .204 percent and .210 percent BAC. Respondent was taken to the EPD jail where she consented to the drawing of a blood sample, which tested .19 percent.

#### **SECOND CAUSE FOR DISCIPLINE**

##### **(Feb. 9, 2012 Conviction for Driving With BAC .08 Percent or More On Nov. 5, 2011)**

17. Respondent has subjected her licenses to disciplinary action under Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On February 9, 2012, in a criminal proceeding entitled *The People of the State of California v. Donna Arlene Clar*, in Santa Barbara County Superior Court, Figueroa Division, case number 1400735, Respondent was convicted on her plea of no contest to violating VC section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a misdemeanor. Respondent admitted and the court found true the allegation that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578. Respondent also admitted and the court found true the allegation that pursuant to VC section 23540, within ten years of violating VC section 23152, subdivision (b), mentioned above, on or about January 26, 2007, she committed a separate violation of VC section 23152, subdivision (a), DUI, a misdemeanor resulting in a conviction on April 25, 2007, in case number CN225155, detailed in paragraph 16, above. A charge for violating VC section 23152, subdivision (a), DUI, a misdemeanor with similar enhancements was dismissed pursuant to a plea bargain.

b. As a result of the conviction, on February 9, 2012, Respondent was granted three years unsupervised probation and sentenced to 365 days in the Santa Barbara

1 County Jail, which was suspended. Respondent was further sentenced to serve 30 days in the  
2 Santa Barbara County Jail, with credit for two days actually served and two days for good  
3 conduct. Respondent was also ordered to pay assessments, surcharges, fees, and fines, and attend  
4 and successfully complete an 18-month multiple offender alcohol program (SB38).

5 c. The facts that led to the conviction are that on November 5, 2011,  
6 Respondent's vehicle was observed by a concerned citizen for making several unsafe lane  
7 changes along United States Highway 101, northbound to Santa Barbara County. A responding  
8 officer of the California Highway Patrol awaited for Respondent's vehicle along the highway  
9 and followed to observe when the vehicle passed. When Respondent failed to maintain her lane,  
10 the officer activated the patrol car's forward red lights. Respondent came to a stop. Upon contact,  
11 the officer immediately noticed the smell of alcohol coming from Respondent's vehicle. The  
12 officer also noticed Respondent's red watery eyes, slurred speech, and unsteady gait. Respondent  
13 did not perform the field sobriety tests (FST) as explained and demonstrated by the officer.  
14 Respondent was taken to Goleta Valley Hospital where she consented to a blood draw, which  
15 upon testing at the Santa Barbara County Sheriff's Department Crime Laboratory registered .23  
16 percent BAC. After the blood draw and medical clearance from the hospital, Respondent was  
17 booked into the Santa Barbara County Jail.

### 18 **THIRD CAUSE FOR DISCIPLINE**

#### 19 **(Unprofessional Conduct - Use Of Alcohol in a Dangerous Manner)**

20 18. Respondent has subjected her licenses to disciplinary action under Code section  
21 2762, subdivision (b), in that on or about January 25, 2007, and November 5, 2011, as described  
22 in paragraphs 16 and 17, above, she used alcoholic beverages to an extent or in a manner that was  
23 potentially dangerous and injurious to herself and to others when she operated a motor vehicle  
24 with a significantly high BAC.

### 25 **FOURTH CAUSE FOR DISCIPLINE**

#### 26 **(Unprofessional Conduct - Conviction Of an Alcohol Related Criminal Offense)**

27 19. Respondent has subjected her licenses to disciplinary action under Code section 2762,  
28 subdivision (c), in that on April 25, 2007, and February 9, 2012, as described in paragraphs 16

1 and 17, above, Respondent was convicted of criminal offenses involving the consumption of  
2 alcohol.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Confinement Due to Intemperate Use of Alcohol)**

5 20. Respondent has subjected her licenses to disciplinary action under Code section  
6 2762, subdivision (d), in that on November 5, 2011, as described in paragraph 17, above,  
7 Respondent was committed to the custody of the Santa Barbara County Jail for intemperate use  
8 of alcohol.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
11 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


12 1. Revoking or suspending Registered Nurse License Number 481229, issued to  
13 Donna Arlene Clar;

14 2. Revoking or suspending Public Health Nurse Certificate Number 50730, issued to  
15 Donna Arlene Clar;

16 3. Ordering Donna Arlene Clar to pay the Board of Registered Nursing the  
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
18 Professions Code section 125.3;

19 4. Taking such other and further action as deemed necessary and proper.  
20  
21

22  
23 DATED: February 19, 2013

*for*   
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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